

ST 96-30

Tax Type: SALES TAX

Issue: Machinery & Equipment Exemption - Manufacturing

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	
v.	)	Docket #
	)	
TAXPAYER	)	IBT #
	)	
Taxpayer	)	

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RECOMMENDATION FOR DISPOSITION

APPEARANCES

Del Haschemeyr, Stratton, Dobbs, & Nardulli, for TAXPAYER.

SYNOPSIS

This cause came on to be heard following a Retailers' Occupation and Use Tax audit performed upon TAXPAYER (hereinafter "taxpayer") by the Illinois Department of Revenue (hereinafter the "Department") for the period of January 1, 1988 through September 30, 1990. After completion of the audit work, the auditor reviewed the audit findings with a representative of the taxpayer. Certain findings made by the auditor were agreed to by taxpayer and are not subject to this hearing. Taxpayer did not agree with assessment of a few items causing the Department to subsequently issue an assessment whose timely protest by taxpayer resulted in this contested case.

At issue is if certain items qualify for the manufacturing machinery and equipment exemption, these items being a 4X4 bulk loader and bucket, and a part for a conveyor which moves blended fertilizer to equipment that will move it to the field. Also at issue is if two tender leader beds mounted on trucks qualify for the farm machinery and equipment exemption.

After reviewing this matter, I recommend the issues be resolved partly in favor of the taxpayer and partly in favor of the Department.

#### **FINDINGS OF FACT**

1. Taxpayer conducted business operations in Illinois during the audit period by selling agricultural related supplies and products such as fuel, seed, equipment, and bulk fertilizer. (Tr. pp. 9-10; Dept. Ex. No. 2)

2. The bulk fertilizer taxpayer sells to farmers is mixed at its Marion location by its own equipment. (Tr. pp. 9-11, 17-18)

3. The component parts of the bulk fertilizer product are potash, triple super phosphate, diammonium phosphate and urea. (Tr. p. 13)

4. Taxpayer used the 4X4 diesel loader and attached bucket to move and place bulk amounts of the different fertilizers into its blender prior to their being blended together to meet the specifications desired by the farmer customers. (Tr. pp. 15-17)

5. The production cycle for the blending of the custom fertilizer product begins when the different fertilizers are mixed together in taxpayer's blending equipment. (Tr. pp. 9-17)

6. The taxpayer used the tender beds on trucks to haul bulk fertilizer on the public highways to the fields of its farmer customers. (Tr. pp. 26-28)

7. Pursuant to statutory authority, the auditor did cause to be issued a Correction and/or Determination of Tax Due (SC-10) and this served as the basis for Notice of Tax Liability (NTL) No. XXXXX issued May 30, 1991 for \$4,499.00, inclusive of tax, penalty and interest. (Dept. Ex. Nos. 1 and 3)

8. The introduction of the Department's corrected return and NTL into evidence established its *prima facie* case. (Tr. p. 3; Dept. Ex. Nos. 1 & 3)

#### **CONCLUSIONS OF LAW**

Section 3 of the Use Tax Act (Ill. Rev. Stat. 1989, ch. 120, par. 439.3)<sup>1</sup> imposed Use Tax upon the privilege of using in this State tangible personal property such as end loaders and tender beds that can be mounted on trucks. This same Section excluded from taxation:

" . . . farm machinery and equipment both new and used . . . certified by the purchaser to be used primarily for production agriculture...

For purposes of this Section, 'production agriculture' means the raising of or the propagation of: livestock; crops for sale for human consumption; crops for livestock consumption . . .

\* \* \*

. . . the use of machinery and equipment primarily in the process of the manufacturing or assembling of tangible personal property for wholesale or retail sale. . " Ill. Rev. Stat., ch. 120, par. 439.3

Similarly, Section 2 of the Retailers' Occupation Tax Act exempted:

" . . . (a-1) the proceeds from the sale of farm machinery and equipment both new and used . . . certified by the purchaser to be used primarily for production agriculture...

\* \* \*

(d) the proceeds from the sale of machinery and equipment which will be used by the purchaser \* \* \* primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale \* \* \* Ill. Rev. Stat., ch. 120, par. 441

While the auditor assessed Use Tax on the disputed items in this case, it is clear that the Department's Retailers' Occupation Tax regulations on these exemptions (86 *Ill. Adm. Code*, ch. I, Sections 130.305 and 130.330) apply in an analysis of whether items qualify under the Use Tax Act exemption (86 *Ill. Adm. Code*, ch. I, Section 1201).

Because the primary usage of the 4X4 end loader was for movement of the fertilizers prior to their placement into the blender where the production cycle begins, I conclude the loader is not exempt pursuant to 86 *Ill. Adm. Code*, Section 130.330(d)(4)(C). The same applies to the attached bucket used to move the fertilizer into the blender. I cannot agree with taxpayer's argument that the end loader causes a physical change upon the component materials because the

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<sup>1</sup>. This and subsequent statutory citations are those that were in effect during the audit period.

main purpose of the loader is to transport the material prior to the start of the blending which in this case is the manufacturing process. In cases such as this, there is a presumption against exemption from taxation that must be overcome by a taxpayer, Van's Material Co. v. Dept. of Revenue, 131 Ill.2d 196, 1989, and I cannot conclude taxpayer has met that burden because the evidence herein fails to show that this loader is an essential part of the manufacturing process.

I find taxpayer's usage of the replacement part for the conveyor mechanism qualifies it for exemption under Section 130.330(d)(3)(E), and I recommend the tax attributable to this item be deleted from the final assessment. (Dept. Ex. No. 2, p. 4; 2/5/90 doc. #205PRG9970)

The tender beds in question were mounted on trucks by taxpayer after purchase and then used to transport fertilizer to the farmers' fields. I find these tender beds do not qualify under the farm machinery and equipment exemption because the above cited statutory language on the meaning of production agriculture, as further defined with respect to crops in 86 Ill. Adm. Code, ch. I Sec. 130.305 (f), does not expand the fertilizer application process to include the pre-delivery transportation function. Because the application of a tax exemption is to be strictly construed, I will not expand this one in the instant case. I also note these tender beds are mounted on trucks that were titled with the Illinois Secretary of State and Section 130.305 (h) excludes from exemption vehicles registered pursuant to the Illinois Motor Vehicle Code. While Section 130.305 (o) excludes from taxation equipment used by custom fertilizer operators, this provision does not apply here because the tender trucks are used to transport the fertilizer, not apply it onto the fields. The field application process is performed using separate spreaders on which the auditor allowed the exemption during his audit.

Regarding two letter rulings taxpayer relies upon that were issued by the Department in the early 1980's involving a front-end loader and tender similar to those at issue herein, I note the Department was not estopped in this case

from assessing these items. Austin Liquor Mart v. Department of Revenue, 51 Ill.2d 1, (1972) In writing this recommendation, I am limited to examination of competent evidence produced at hearing, along with any materials officially noticed, and I cannot conclude upon this record that the loader and tenders are entitled to exemption.

In summary, I find that with the exception of the tax on the conveyor part, the Notice of Tax Liability should stand as issued.

**RECOMMENDATION**

Based upon my findings and conclusions as stated above, I recommend the Department reduce NTL XXXXX and issue a final assessment.

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Karl W. Betz, Administrative Law Judge